

Remarks

The applicants have carefully considered the Office action dated August 23, 2007, and the references it cites. By way of the foregoing claims 1, 91, and 116 have been amended. Claims 1, 91, 116, 182, 184, 186, 188, 190, and 192 are independent. In view of the foregoing amendments and the following remarks, it is respectfully submitted that the claims are clearly distinct from the cited art and are therefore in condition for allowance.

The Rejections Under 35 U.S.C. §103

The Office action rejects claims 1-33, 35, 37-53, 68-69, 73-78, 82-93, 105-122, and 126-193 as obvious over a combination of Williams et al. and Maissel, et al. It is respectfully submitted that the pending claims are patentable over the cited art.

Independent claims 1 and 91 recite, *inter alia*, determining a probability that an audience member is in an audience of a program being viewed at a first location based on historical tuning information of the audience member during a corresponding time interval, or an article of manufacture storing machine readable instructions to do the same upon execution.

Williams is directed to method and apparatus for automatically determining and dynamically updating user preferences in an entertainment system. Williams does not, however, describe or suggest determining a probability that an audience member is in an audience of a program being viewed at a first location based on historical tuning information of the audience member during a corresponding time interval. Rather, Williams describes user interface functionality that is designed to facilitate different user preferences. In particular, Williams describes using the frequency of tunings for each channel to organize a television schedule grid. See Williams col. 7, lines 14-62 and col. 8, lines 12-42. It is respectfully submitted that Maissel and Eldering are similarly deficient and these references have not been cited as making such a description. Therefore, for at least the foregoing reason, claims 1 and 91, and all claims dependent therefrom, are patentable.

Claim 116 recites an apparatus comprising a memory, and a processor coupled to the memory and programmed to determine a variable representative of a likelihood an audience member is present in an audience of a program being viewed at a first location

based on a tuning history of the audience member during a corresponding time interval.

As explained above, Williams is directed to a user interface. Williams does not, however, describe or suggest a processor coupled to the memory and programmed to determine a variable representative of a likelihood that an audience member is present in an audience of a program being viewed at a first location based on a tuning history of the audience member during a corresponding time interval. Therefore, for at least this reason, claim 116 and all claims dependent therefrom are patentable.

Independent claims 182, 184, 186, 188, 190, and 192 were rejected in the Final Office action as “composed of the same structural elements that were discussed in the rejection of claim 1.” A comparison of these claims with the prior version of claim 1 reveals several recitations not found in claim 1. Thus, it is respectfully submitted that the Final Office action did not make a *prima facie* rejection of such claims. Thus, the applicants have not had a full and fair opportunity to evaluate proper *prima facie* rejections and, thereby, move prosecution on the merits forward. Thus, it is respectfully submitted that claims 182, 184, 186, 188, 190, and 192, and all claims dependent thereon, are in condition for allowance.

Therefore, in view of the foregoing, it is respectfully submitted that claims 1, 91, 116, 182, 184, 186, 188, 190, and 192 and all claims depending thereon are in condition for allowance, and reconsideration is respectfully requested.

Respectfully submitted,

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